

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DREW E. BURBRIDGE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Case No. 4:17-CV-2482-RLW
v.	)	
	)	
CITY OF ST. LOUIS, MISSOURI, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

The Court should dismiss Plaintiffs' state law tort claims alleged against the City in Counts V, VI, VII, VIII, and X because such claims are barred by sovereign immunity.

In Missouri, public entities such as the City of St. Louis are afforded sovereign immunity from tort claims except those stemming from automobile accidents or unsafe property conditions. § 537.600, RSMo; *see also Davis v. Lambert-St. Louis Int'l Airport*, 193 S.W.3d 760, 764 (Mo. banc 2006); *McNeill Trucking Co. v. Mo. State Hwy. and Transp. Comm'n*, 35 S.W.3d 846, 848 (Mo. banc 2001) (general rule is that government may not be sued without its consent); *St. Louis Police Officers' Ass'n v. Bd. of Police Comm'rs*, 846 S.W.2d 732, 735 (Mo. App. E.D. 1992) (police board immune except to the extent immunity has been waived by Missouri state statute); *Krasney v. Curators of Univ. of Missouri*, 765 S.W.2d 646, 649-50 (Mo. App. W.D. 1989) (absent an express waiver of immunity, a governmental entity may not be sued for torts or claims that are tort-like).

Sovereign immunity is not an affirmative defense but is part of a plaintiff's *prima facie* case. *St. John's Clinic, Inc. v. Pulaski Cty. Ambulance Dist.*, 422 S.W.3d 469, 471

(Mo. App. S.D. 2014). As such, a plaintiff must plead each element of an alleged waiver of sovereign immunity. *Id.*

In Counts V, VI, VII, VIII, and X of the Complaint, Plaintiffs purport to allege tort claims against the City under Missouri state law. However, such claims do not arise from an automobile accident or an unsafe property condition, and Missouri has not waived sovereign immunity from such claims. *cf.* Mo. Rev. Stat. § 537.600.

Consequently, Plaintiffs' state law claims against the City alleged in Counts V, VI, VII, VIII, and X are barred by sovereign immunity. *Id.*

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2017, the foregoing **Defendants'** **Memorandum in Support of Motion to Dismiss** was served via the Court's electronic filing system upon all counsel of record.

/s/ H. Anthony Relys  
H. Anthony Relys  
Assistant City Counselor